APPENDIX 1

AUGUST 30, 2007 AND FEBRUARY 28, 2008 LETTERS FROM JAY MCKEEMAN OF THE CALIFORNIA INDEPENDENT OIL MARKETERS ASSOCIATION (CIOMA) TO MARY NICHOLS, ARB CHAIRMAN

California Independent Oil Marketers Association
3831 N. Freeway Blvd. #130 • Sacramento, CA 95834
(916) 646-5999 • (916) 646-5985-fax
www.cioma.com

August 30, 2007

Enhanced Vapor Recovery Train Wreck Approaching!!

Members of the Air Resources Board:

Ms. Mary D. Nichols, Chair
Ms. Sandra Berg
Ms. Judy Case
Ms. Dede D'Adamo
Dr. Henry Gong, Jr.
Mr. Jerry Hill
Ms. Lydia H. Kennard
Mr. Ron Loveridge
Mrs. Barbara Riordan
Mr. Ron Roberts
Mr. Dan Sperling

California Air Resources Board
P.O. Box 2815
1001 "I" Street
Sacramento, CA 95812

This letter is being written to alert you to a situation that could lead to a very serious and unnecessary disruption of the gasoline marketplace. The problem is that CARB has a regulatory program underway that has the high likelihood of creating a retrofit crisis as a compliance deadline looms in 2009 (i.e. the "train wreck"). All state gasoline dispensers will have to be retrofitted between now and then – and only until recently (May of this year) has CARB staff provided *any* flexibility for the vast majority of state gasoline dispensers in meeting this regulatory burden. More details on the urgency of this situation are explained later in this letter.

There are ***583 days left*** until the EVR installation deadline
Approximately ***11,500 facilities need retrofitting***
20 facilities/day or 600 facilities/month
need to be retrofitted to meet this deadline
(calculated from 8/27/07)

Although 2009 seems like a long time away, there are significant resource shortages likely if this deadline clock keeps ticking without adjustment – meaning that installation deadlines will be missed, penalties are likely, product and installation prices will shoot through the roof, many, many hours will be spent negotiating compliance agreements, tempers will run short and ultimately the California fuel consumer will pay the price. There is also the matter of many independent owners/operators of gasoline dispensing facilities (GDFs) having to procure financing which can only begin when a system that fits their needs is certified and the cost of installing the system becomes available.

We are asking for a short delay in the implementation deadline – *NOT RELIEF FROM CALIFORNIA'S UNIQUE, EXPENSIVE AND TECHNOLOGY-FORCING REQUIREMENTS!!!* We believe this request is reasonable, while providing both small business owners and regulators adequate time to implement new technology on a common-sense basis. And, it will result in the eventual same air quality improvement, merely necessitating an essential and relatively minor adjustment to the compliance time table. Such an adjustment will result in more compliance options, more assured quality installations with reasonable costs and reduction of impact on the gasoline marketing community and the consuming public.

Here are the problems and why they are rapidly approaching "train wreck" status:

Clock is ticking, but certified systems not available – Presently CARB has promulgated a program that requires the enhancement of the current Phase II vapor recovery system in California. While we have reservations with regard to the need for all of these additional enhancements, we are not opposing them. What we are concerned about is an unreasonable deadline based on the certification of a single *vac-assist* vapor recovery system specific to five late model dispensers. *Up until May, 2007 this was the ONLY OPTION available to service stations owners and operators*.

A very large majority (+90%) of the existing GDFs happen to be *balance* type Phase II systems and have dispensers that were not listed in the initial certification. A universal dispenser manual was recently issued by CARB staff to allow the retrofitting of this singular *vac-assist* system on the remainder of existing GDFs. However, recent exploration of the costs for this option is showing that it is equivalent to replacing *balance* system dispensers with *vac-assist* units. The replacement of technology types, such as replacing *balance* systems with *vac-assist* systems, was never envisioned during the initial adoption of the Enhanced Vapor Recovery regulations.

Numerous meetings with CARB staff have been held attempting to obtain a resolution to this problem, but with no willingness to reach a reasonable compromise on their behalf as they feel that a single EVR solution is all that is necessary.

Late options, high cost, uncertain local agency ability to approve – The *vac-assist* universal dispenser manual was offered at the half-way point of the 4-year compliance deadline, and puts unreasonable demands on the entire owner/installer/permitting system, while the clock still ticks. This is in addition to the unreasonable costs of changing *balance* systems to *vac-*

assist technology. Another problem with the current state of the program is that additional options are just now becoming available and they require gearing up the manufacturing processes for new equipment, new certification of installers, education of local agency personnel who oversee the equipment installation and permitting, and education of the regulated community regarding the system costs, operation and effectiveness.

Overall problems with installation of retrofits in a timely manner – Beyond the specific problems associated with the current state of additional options just now becoming available, there remains the unavoidable logistics issues associated with the financing, purchasing, permitting , installation and final inspection of compliant units for 90%+ of California GDFs in *less than 2 years*. The problems are:

- Installation – As noted in the box on the first page of this letter, about 20 facilities/day need to be retrofitted to meet the compliance deadline. Due to permitting and inspection requirements this is an *impossible* task – see the following issues descriptions.

- Permitting/Inspection – Permitting is a major obstacle in achieving timely installation of retrofit technology. It can take months to get permits reviewed and approved and the closer we get to the deadline the more permits stack up on regulatory desks. It is inconceivable to anyone in the regulated community that the substantial number of GDF's that remain to be permitted can be permitted in a timely manner, and inspected before their daily operation is allowed.

  An additional wrinkle in this that installers now need to be certified. Since there has been no certified equipment for *balance* systems (one is pending), there are no certified installers. Trying to certify a large number of installers for new systems will further delay installation and permitting of equipment.

- Financing – For many service station operators, especially those owned and operated by small businesspersons, the high cost of retrofitting service station dispensers must be accomplished by securing loans. Retail margins for petroleum products have plummeted since CARB has adopted unique fuel standards in this state. That creates a significant problem for the small businessperson who has to justify financing to lenders based upon business operations and financial stability. When these costs are added to other high costs of operating in this state (many of those costs created by unique and highly expensive environmental requirements) it becomes difficult to obtain financing.

- Purchasing – The ability to purchase retrofit equipment – again especially for the small businessperson – is compounded by the fact that the equipment cannot be purchased in bulk – as the larger companies can do. So per-unit costs of equipment are increased for the small business operator. In addition, equipment availability can become constrained as deadlines approach, since quantity purchasers get top priority. This also applies to the hiring of contractors.

> In any case, as we approach the deadline, the sheer number of dispensers that need retrofitting is likely to overwhelm permitting capability, equipment manufacturers and certified installation contractor capacity. This is the approaching train wreck.

Four years is four years – CARB staff states that, "State law (HSC section 41956.1) provides that vapor recovery systems certified under procedures in effect prior to adoption of revised standards and installed prior to the effective date of the revised standards may continue to be used for a period of four years after the effective date of the revised standards." For practical and reasonable reasons, this premise should only be applied once there are legitimate options available to the regulated community to meet the new standards. This was certainly not the case relative to the April 2005 certification of an EVR II system that was only applicable to about 10% of the GDF population. Although we believe that the 4-year clock should begin with the issuance of an EVR system that meets the majority of the GDFs vapor recovery type (i.e., balance), there is good reason to restart the clock from the date that the universal dispenser manual was issued, or once a balance system is certified.

The Solution – **Our proposal is to provide owners of balance systems four years from the time that CARB approves a retrofit system that can be used with balance systems**, which we are told is likely to be September of this year. In reality that will only be a two-year extension for balance system owners, since it will extend the compliance deadline from April/September, 2009 until September, 2011. This will provide for the timely and orderly change-out of 90% of the state's fuel dispensers with appropriate systems and equipment.

We ask for your immediate consideration of this reasonable, logical and economically prudent request.

Sincerely,

Jay McKeeman,
Vice President of Government Relations and Communications

Dennis DeCota, Executive Director
California Service Station & Automotive Repair Association

cc: Kathleen Quetin, CARB Ombudsperson
Linda Adams, Secretary, Cal/EPA
Bill Loscutoff, Chief, Monitoring & Laboratory Division, CARB

California Independent Oil Marketers Association
3831 N. Freeway Blvd. #130 • Sacramento, CA 95834
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February 28, 2008

Ms. Mary Nichols, Chair
California Air Resources Board
P.O. Box 2815/1001 "I" Street
Sacramento, CA 95812

Subject: Consideration of CARB update on the status of the Enhanced Vapor Recovery/In-Station Diagnostics retrofit deadline, April, 2009 by the full Board

Dear Chairperson Nichols:

We understand that the Monitoring & Laboratory Division (MLD) is in the process of preparing an update memorandum to the Board regarding the status of service stations obtaining permits and performing retrofits to meet the April, 2009 CARB regulatory deadline. We also understand that this memo is NOT scheduled for public review by the entire Board.

We are requesting that this update memo be scheduled for public consideration at the May 22-23 Board hearing. The latest statistics show that over 10,000 sites still need to be permitted and retrofitted. This means approximately 950 sites per month, between now and the April, 2009 deadline, will have to be finalized. We frankly see no way that this will be accomplished. In addition, local air districts have not provided sufficient contingency enforcement information if they encounter difficulties in getting stations approved. With the absence of this information we feel quite strongly that fueling stations will be forced to close, creating a serious fuel supply problem in this state. We believe the magnitude of the problem is serious enough to warrant full Board consideration in a public hearing format.

We would appreciate a quick response to this request so that our members can plan accordingly. Fell free to contact me at my office if you have any questions regarding this request.

Sincerely,

Jay McKeeman,
Vice President of Government Relations and Communications

cc: Kathleen Quetin, CARB Ombudsperson
Linda Adams, Secretary, Cal/EPA
Bill Loscutoff, Chief, Monitoring & Laboratory Division, CARB
Jackalyne Pfannenstiel, Chair, California Energy Commission
Gordon Schremp, California Energy Commission
CIOMA Board of Directors

APPENDIX 2

ADVISORY 373: ENHANCED VAPOR RECOVERY (EVR) UPDATE AND PENALTIES FOR APRIL 2009 DEADLINE

California Environmental Protection Agency

Air Resources Board
Vapor Recovery Advisory

Gasoline Dispensing Facility Enhanced Vapor Recovery (EVR) Phase II System Update and Penalties for April 2009 Deadline

Number 373 **April 4, 2008**

Gasoline dispensing facilities (GDFs) with underground storage tanks subject to Phase II vapor recovery requirements must upgrade to Enhanced Vapor Recovery (EVR) Phase II vapor recovery by **April 1, 2009**. **This deadline will not be extended.**

VST BALANCE EVR PHASE II SYSTEM NOW CERTIFIED WITH ISD

The Vapor Systems Technologies EVR Phase II balance system with in-station diagnostics (ISD) was certified on April 1, 2008 (VR-204). Visit http://www.arb.ca.gov/vapor/eos/eo-vr204/eo-vr204a.htm for more information. The VST system joins the Franklin Fueling/Healy system as a certified Phase II vapor recovery system with ISD that complies with the EVR Phase II certification standards and specifications.

NO ADDITIONAL EVR PHASE II SYSTEMS UNTIL 4TH QUARTER 2008 OR LATER

More EVR Phase II systems are in the certification process and could be available by the end of 2008; but there is no guarantee that any system currently in the certification process will successfully complete all performance testing and legal requirements to obtain EVR certification. ARB staff will take appropriate action against those who make false claims about, or distribute false information regarding, the availability of currently uncertified EVR Phase II systems.

PENALTIES IF FAIL TO MEET APRIL 2009 EVR PHASE II DEADLINE

It will be illegal to operate any vehicle fueling system subject to Phase II vapor recovery requirements after March 31, 2009. Failure to comply with the EVR requirements may result in fines and the non-compliant GDFs are subject to being tagged out of service. Substantial penalties for noncompliance are authorized under Health and Safety Code Sections 42400 and 42402 (see http://www.arb.ca.gov/bluebook/bb07/HEAd/HEA_d_26_p_4_ch_4_art_3.htm).

AIR POLLUTION CONTROL DISTRICTS/AIR QUALITY MANAGEMENT DISTRICTS

Air pollution control districts have primary authority for regulating GDFs under vapor recovery laws and rules. **GDF operators should contact the local air district for specific information on local vapor recovery requirements before modifying a facility.** Contact information for local air pollution control districts is available on the air district permit or at http://www.capcoa.org.

FOR MORE INFORMATION…

Visit http://www.arb.ca.gov/vapor/vapor.htm or contact the ARB Engineering and Certification Branch at (916) 327-0900. Information to assist GDF operators and local permitting agencies with applications to install the EVR Phase II vapor recovery systems is available at http://www.evrhome.org/.

APPENDIX 3

NOVEMBER 12, 2007, LETTER FROM DOUG QUETIN, PRESIDENT OF CALIFORNIA AIR POLLUTION CONTROL OFFICERS ASSOCIATION (CAPCOA) TO JAMES GOLDSTENE, ARB EXECUTIVE OFFICER

CAPCOA
CALIFORNIA AIR POLLUTION CONTROL OFFICER'S ASSOCIATION

980 Ninth Street, 16th Floor
Sacramento, CA 95814
(916) 449-9603 (916) 449-9604 FAX
www.capcoa.org

November 12, 2007

Mr. James Goldstene, Executive Officer
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

Re: Compliance Deadline for Phase II Enhanced Vapor Recovery at Gasoline Dispensing Facilities

Dear Mr. Goldstene:

The California Air Pollution Control Officers Association (CAPCOA) is very concerned with recent requests sent to your office and members of the California Air Resources Board asking for further delay in implementing Phase II Enhanced Vapor Recovery (EVR) at gasoline dispensing facilities (GDF). Given the current and future outlooks for air quality in California, CAPCOA is strongly opposed to any delay in implementing measures that will provide proven and cost effective emission reductions. Therefore, CAPCOA urges your commitment to hold steadfast to the 2009 EVR deadlines that have already been delayed a number of times and have been known to industry since its inception in 2000.

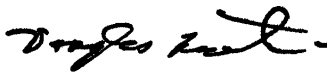
The mandate for enhanced vapor recovery for gasoline dispensing equipment was imposed back in 2000 as a result of a lawsuit regarding the State Implementation Plan. The regulations adopted by your Board already allowed a four-year implementation period, which is ample time, for upgrading existing systems from the time a certified system becomes commercially available. The end result of allowing time for implementation is a nine-year delay from the initial adoption. In addition, with the recent changes in the National Air Quality Standards, many more areas in California are now in non-attainment of the standards. We need to implement all feasible emission reduction measures without delay.

ARB and local air districts staff have conducted joint compliance audits at GDF. These audits revealed dismal compliance rates and many operational and maintenance problems. The use of In-Station Diagnostic (ISD) systems, which is slated for September 2009, will help the operator identify the majority of the problems inspectors now find and minimize avoidable excess emissions resulting from wear-and-tear of the equipment. ARB and local air districts staff have also engaged in considerable outreach effort to notify GDF operators of the impending deadlines and to help them obtain necessary approvals from other regulatory agencies.

ARB's own survey indicates that there are adequate sources for equipment and contractors to meet the demand. New systems are also being proposed and evaluated to further supplement the supply, and to facilitate the availability of such systems, ARB should prioritize system evaluation and certification. ARB's recent certification of the VST system is timely and appropriate. There is no reason to postpone the deadline.

Although there are initial costs to GDF operators, Stage II EVR systems will help recover some of the cost by preventing product losses through vent stacks and better monitoring of the operation, thereby, minimizing equipment down time. Most importantly, gasoline vapor emissions are toxic and pose one of the highest health risks to Californians. Timely implementation of Phase II EVR will minimize these toxic emissions. Therefore, CAPCOA strongly urges you to resist any request for further delay in the implementation of EVR Phase II and ISD requirements.

Sincerely,



Douglas Quetin
President

cc: Tom Cackette, ARB

APPENDIX 4

NOVEMBER 15, 2007, LETTER FROM WILLIAM SPURGEON OF SHELL OIL PRODUCTS US TO MARY NICHOLS, ARB CHAIRMAN

Shell Oil Products US
20945 S Wilmington Ave
Carson, CA 90810

November 15, 2007

Mary D. Nichols, Chairman
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812-2815

Subject: April 1, 2009 EVR Phase II Deadline

Dear Ms Nichols:

Shell Oil Products US (Shell) is aware of recent letters and discussions alluding to a possible extension of the April 1, 2009 compliance deadline for EVR Phase II. While we are not pleased with the limited equipment options to meet the requirements, we do believe that the capabilities for all owners and operators to meet the deadline are and have been available. Shell is making a substantial investment in the planning and execution of upgrades to meet the deadline and believe all owners and operators should be held to the same standard. Those that choose to procrastinate, hoping for a compliance extension, should not be rewarded.

As with any significant change, there is the potential that the permitting and inspection processes may extend the installation timeline beyond our original expectations. If this occurs, we will bring the issue to your attention and seek your assistance to remove obstacles that could prevent our timely compliance with the EVR Phase II regulations. While it's important to continue the dialog with all stakeholders as change occurs, we believe it is most productive to discuss the means to achieve regulatory compliance and not extensions of deadlines that should be achievable with the proper diligence.

We appreciate the opportunity to share our views.

Sincerely,

William D Spurgeon
General Manager - West Region

cc: Linda S Adams, Secretary for Environmental Protection, Cal/EPA
Larry Allen, Chair, California Air Pollution Control Officers Association
Honorable Board Members, California Air Resources Board
James Goldstene, Executive Officer, Air Resources Board
Tom Cackette, Chief Deputy Executive Officer, Air Resources Board
William Loscutoff, Division Chief, Air Resources Board
Kathleen Quetin, Ombudsman, Air Resources Board
Barbara A Kornylo, Manager, Government Relations, Shell Oil Company

APPENDIX 5

MARCH 26, 2008, LETTER FROM WILLIAM LOSCUTOFF, CHIEF, ARB MONITORING AND LABORATORY DIVISION TO ALL LOCAL AIR POLLUTION CONTROL OFFICERS

Linda S. Adams
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Arnold Schwarzenegger
Governor

March 26, 2008

Addressees: All Local Air District Air Pollution Control Officers (APCO)

Dear APCO:

I am writing to request your help in implementing the Enhanced Vapor Recovery (EVR) program. As you may know, approximately 12,000 gasoline dispensing facilities (GDF) statewide must upgrade their Phase II vapor recovery systems to meet EVR standards by April 1, 2009. We need your help in three primary areas as discussed below.

First, we would like you to identify district staff contacts that can assist GDF operators to obtain EVR information and process air district permits expeditiously. We will then provide a list of vapor recovery contacts on our vapor recovery web pages. Please provide the vapor recovery contact names, telephone numbers and email addresses.

Second, we ask for a district contact to work with to set up a mechanism to track progress towards full EVR implementation through monthly reporting. The minimum data requested each month are the total number of facilities in the district that are subject to Phase II EVR requirements, the number of these facilities who have submitted permit applications for the upgrades, and the number of facilities who are now operating with EVR Phase II systems. Additional desired information would be GDF address, and the Executive Order number for EVR vapor recovery system. This data could be transmitted to Air Resources Board staff via email or telephone call on a monthly basis. We would appreciate the first report by April 11, 2008; in order to include the data in our report to our Board on EVR implementation progress due in mid-April.

Finally, we ask for your help in working with other local agencies involved in permitting GDFs to streamline the permit process for EVR upgrades. Examples of these other local agencies are environmental health, fire, planning and building. I know several of the districts have already taken steps to coordinate with other agencies, but we need to do more. Our plan is to provide GDF operators a guideline to permitting that is specific to each air district. These guidelines would identify the local permitting agency contacts, the order in which these permits are obtained, the permit requirements for each agency, ways to expedite permits, etc. We would appreciate if you could identify staff to work with us in preparing these permit guidelines.

We only have twelve months left for approximately 12,000 GDF operators to obtain permits, purchase equipment, hire qualified contractors, install systems, and conduct start-up testing. This is a tremendous undertaking, but we believe it is possible with your help.

Thank you in advance for your assistance. Please forward the district contact information and GDF implementation progress reports to Sue Wyman at swyman@arb.ca.gov or (916) 327-4731. If you have questions or suggestions, please contact Cindy Castronovo at ccastron@arb.ca.gov or (916) 322-8957. We greatly appreciate your efforts.

Sincerely,

Manjit Ahuja for

William V. Loscutoff, Chief
Monitoring and Laboratory Division

cc: Cindy Castronovo
Monitoring and Laboratory Division

Sue Wyman
Monitoring and Laboratory Division

APPENDIX 6

FORM TO REPORT THAT VAPOR RECOVERY SYSTEM OR INSTALLER IF NOT AVAILABLE TO MEET RULE OR CONSTRUCTION DEADLINE FOR THIS GASOLINE DISPENSING FACILITY

State of California Air Resources Board

REPORT THAT VAPOR RECOVERY SYSTEM OR INSTALLER IS NOT AVAILABLE TO MEET RULE OR CONSTRUCTION DEADLINE FOR THIS GASOLINE DISPENSING FACILITY

Please answer the questions below as fully as possible. For questions on this form, contact Frances Cameron at fcameron@arb.ca.gov or (916) 445-9314.

Company Name					
Gasoline Dispensing Facility Address: (If multiple sites, please include a form for each site.)					
City		**State**		**Zip**	
Contact Name					
Contact Title					
Telephone		**Fax**			
Email:					
Air Pollution Permit No.					
Check what is not available:	□ **Vapor recovery equipment**	□ **Installing contractor**			
Check one:	□ **Retrofit**	□ **New facility**			
What is the vapor recovery system or components that you are seeking to purchase or install? (Give Executive Order number or manufacturer and model number.)					
What is the date by which the installation must be completed?					
Reason for installation target date:					

If vapor recovery equipment was ordered, but is unavailable or is on backorder:			
When was the compliant vapor recovery system or components ordered? (Please attach or fax a copy of the order and the notice showing items on backorder.)			
What is the expected shipping date? (Please attach or fax documentation of the expected ship date.)			
If an installing contractor is unavailable:			
How did you determine that an installing contractor was unavailable?			
Please list up to three contractors you contacted and the date each is first available. Attach or fax copy of contractor response if available.			
Contractor company name:	**Phone No:**	**Date Available:**	
1.			
2.			
3.			
What are the consequences of the delay to your business due to the unavailability of either the vapor recovery equipment or an installing contractor?			
Have you contacted the local air pollution control district regarding this concern?	□ **Yes**	□ **No**	

Thank you for providing the above information. Please keep in mind that submitting this form to the California Air Resources Board does not exempt a GDF operator from complying with all applicable local air pollution control regulations. Contact your local air district for information about these requirements and compliance options, if any.

Date _____ **Signature** _____

Please add any comments on a separate page. Email to fcameron@arb.ca.gov , mail to Frances Cameron, Air Resources Board, Monitoring and Laboratory Division, P.O. Box 2815, Sacramento, CA 95812, or fax to (916) 322-2444.

APPENDIX 7

EVR BROCHURE: ENHANCED VAPOR RECOVERY (EVR) AND THE APRIL 2009 DEADLINE

Now is the Time to Plan for EVR Upgrades...

Gasoline Dispensing Facilities (GDFs) with underground storage tanks subject to Phase II vapor recovery requirements will need to upgrade to Enhanced Vapor Recovery (EVR) by ...

APRIL 1, 2009

How do I know if my GDF is subject to EVR?

If your GDF has a Phase II vapor recovery system and an underground storage tank, then it will probably need to be upgraded. GDFs in air districts that are in attainment with the state ozone standard may be exempt from EVR. Check with your local air district to verify if EVR applies to you and to find about other local vapor recovery requirements.

Are new installations subject to EVR now?

Yes. New GDFs, even in ozone attainment air districts, must install EVR systems.

Could my existing GDF be subject to EVR requirements before April 2009?

Yes. Changes to a GDF that qualify as a "major modification" can require immediate upgrades or changes prompted by other agencies, such as the local water quality control agency. Contact your local air district before initiating site changes.

California Air Resources Board
Vapor Recovery Program
Monitoring and Laboratory Division
P.O. Box 2815
Sacramento, CA 95812
(916) 327-0900

For more information go to:
http://www.evrhome.org/ and
http://www.arb.ca.gov/vapor/vapor.htm

For links to local air pollution control districts go to:
http://www.capcoa.org/districts.php

For information in alternative formats:
(916) 323-4916 (voice, ARB ADA Coordinator)
(916) 324-9531 (TDD, Sacramento area only)
(800) 700-8326 (TDD, outside of Sacramento)

State of California
Air Resources Board

ENHANCED VAPOR RECOVERY PROGRAM

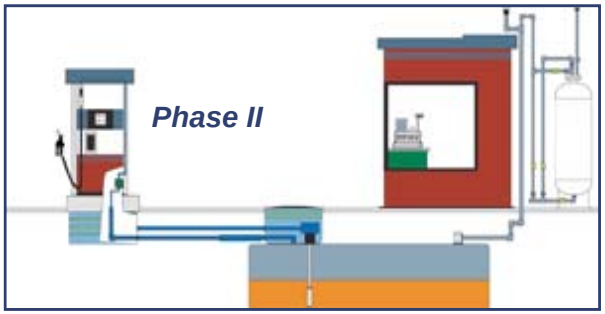
What Gasoline Dispensing Facilities, Local Permitting Agencies and Contractors Need to Know about...

Enhanced Vapor Recovery (EVR) and the APRIL 2009 Phase II DEADLINE

Monitoring and Laboratory Division
www.arb.ca.gov/vapor/vapor.htm
(916) 327-0900
April 2008

What is Enhanced Vapor Recovery (EVR)?

Vapor recovery systems collect gasoline vapors that would otherwise escape into the atmosphere during bulk fuel delivery (Phase I) or vehicle refueling (Phase II). These vapors are a major culprit in the formation of smog.



The EVR program provides more stringent requirements for vapor recovery systems in order to reduce gasoline vapor emissions. Some EVR requirements, such as the installation of EVR Phase I systems and upgrades to make Phase II systems compatible with new vehicles, have already been accomplished. The next deadline requires additional Phase II equipment, including vapor processors, by April 1, 2009.

The final EVR deadlines relate to in-station diagnostics, or ISD. ISD monitors the performance of the vapor recovery systems and triggers alarms when failures occur. If corrective action is not taken, ISD may lead to station shut-down.

Annual Thoughput (gal)	ISD Requirement
More than 1.8 million	Install ISD by Sept. 2009
Less than 1.8 million but more than 600,000	Install ISD by Sept. 2010
Less than 600,000	Exempt from ISD

For Gasoline Dispensing Facilities:

How do I find out what EVR systems are available?

After conducting extensive field testing, ARB certifies vapor recovery systems by issuing an Executive Order. Executive Orders for EVR Phase II systems, both with and without ISD, are available at: www.arb.ca.gov/vapor/eo-evrphaseII.htm.

Will other EVR Phase II systems be certified before the April 2009 deadline?

ARB staff continues to evaluate applications and conduct certification tests, but it generally takes about one year to complete the certification process. It is recommended that stations plan now for EVR upgrades in order to avoid possible delays and to ensure compliance by April 2009.

Who will be enforcing the EVR deadlines?

Local air districts are responsible for enforcing compliance deadlines for EVR.

Is my service station in compliance?

Check with your local air district to make sure your station meets all federal, state, and local requirements related to vapor recovery.

How can I stay informed on EVR activities?

ARB and local air districts offer public information meetings on EVR and ISD throughout the state. Check ARB's website for more information on upcoming outreach activities.

For Contractors:

What are the requirements for Contractors?

Contractors who install EVR systems must be trained and certified by the manufacturer. Also, some air districts require district training or International Code Council (ICC) certification as an approved vapor recovery installer. Contractors should verify training and certification requirements with air district staff before beginning installation of EVR systems.

In the next year about 12,000 GDFs will need to obtain permits, purchase EVR equipment and arrange for installation by a certified contractor. There is a potential shortage of certified contractors if GDF operators wait too long to install EVR systems.

For Local Permitting Agencies:

California service stations obtain construction and operation permits from the local air district. Installation of vapor recovery equipment may also trigger reviews from other local permitting agencies. This will create excess demand for assistance from:

- ***Local CUPAs***
- ***Local Cities and Counties***
- ***Local Planning Commissions***
- ***Local Fire Districts***
- ***and Certified Contractors***

For help in gathering information for EVR permits, visit www.evrhome.org.

For California Air Districts: http://www.capcoa.org/districts.php
For Vapor Recovery Executive Orders: http://www.arb.ca.gov/vapor/eo.htm
For Permitting Assistance: http://www.evrhome.org
For ARB Vapor Recovery Advisory #373-EVR Phase II System Update: http://www.arb.ca.gov/vapor/advisories/adv373.pdf

APPENDIX 8

CONTRACT NO. 07-528: FINAL REPORT FROM NORM COVELL

REPORT TO THE CALIFORNIA AIR RESOURCES BOARD CONCERNING ISSUES IN THE IMPLEMENTATION OF PHASE II ENHANCED VAPOR RECOVERY

JANUARY, 2008

CONTRACTOR
NORM COVELL
916-337-1624
ncovell@sbcglobal.net

This report is prepared for CARB in fulfillment of the tasks contained within CARB Agreement No. 07-528, dated and effective October 30, 2007

INTRODUCTION

The purpose of this Agreement is to provide assistance to the California Air Resources Board (CARB) staff regarding the matter of the Enhanced Vapor Recovery Program, mandated by requirements of State law and Executive Orders of the CARB.

The process of implementing the Enhanced Vapor Recovery Program is made somewhat problematic due to:

- A variety of local agencies are involved in the inspection and permitting of the installation of equipment, and some have limited, if any, knowledge regarding the EVR Program.

- A lack of sufficient communication between these agencies.

- Hesitancy on the part of many gasoline dispensing facility (GDF) owners to begin the process.

- A limited variety of approved EVR systems were available to GDF owners.

Through contractor assistance to CARB staff, this report will identify the APCD/AQMD's, local fire agencies, and local planning agencies that will be involved in permitting the EVR upgrades (the remaining agencies will be covered under a separate contract report by Mel Knight). Also the report will identify and assess barriers to meeting the EVR deadlines that result from local agency actions. The report will then categorize these barriers and identify critical paths to achieve compliance by GDF by the statutory deadline.

In addition, the report will identify recommended strategies that can be effectively implemented and provide a plan for outreach to the local permit agencies.

INFORMATION GATHERING AND ASSESSMENT

IDENTIFICATION OF LOCAL PERMITTING AGENCIES

Air Quality Management Districts/Air Pollution Control Districts – There are 35 local air districts covering California's 58 counties. Some are single county districts, while others are multi-county regional districts.

Based upon the current ozone attainment status of the local districts, three districts are exempted from the requirements of Enhanced Vapor Recovery. All three districts are relatively small and are located in northwestern California.

This exemption of three air districts will in addition reduce the total number of other permitting agencies that might otherwise be involved in the EVR permitting process. A website link is attached which includes contact information for those local air districts participating in the EVR program.

It is my belief that all of the local air districts required to participate in the EVR program have sufficient knowledge of the requirements and are into the process of permit review and approval. Some, however, may experience manpower problems when the "surge" of last minute applications are submitted.

Roughly 13,000 GDF's are located within the jurisdiction of these 32 air districts. Indications to date show that approximately 12 to 16% of the GDF's have initiated the EVR permit requirements, with a smaller percentage having completed installation.

Fire Departments/Districts – Multiple fire agencies exist in each county throughout the state. The Professional Fire Fighter's Association currently lists 1,006 separate fire-fighting entities. These agencies are involved in the permitting and inspection of facilities and activities that include flammable materials.

Permit requirements in general will be consistent with the California Fire Code and directives of the State Fire Marshall. A primary concern of these agencies seems to be whether processing of fuel occurs vs. mere storage of the fuel and/or associated vapor.

A website link to the Professional Fire Fighter's Association of California is attached.

Land Use Planning Departments – These agencies are involved in the permitting of local land use projects to determine consistency with adopted general plans, CEQA, zoning and aesthetic community standards.

There are 58 county planning agencies and over 480 city agencies throughout California. Most of these will have an interest in the siting of EVR units. The major focus seems to be the size and locality of the EVR project footprint. A second concern is the potential of the project to impair the visibility of drivers, as well as aesthetic concerns.

Many of these agencies have little or no understanding of the purpose of an EVR installation is, or how it works. A significant barrier to a timely permit approval process are manpower limitations in some planning agencies. Some of the cause can be attributed to the recent slowdown in building construction throughout the State of California, which has resulted in staff layoffs.

Website links for each of the city and county planning agencies are attached.

Related Trade Associations and Organizations – While these entities are not a part of the formal permitting process for EVR, they do represent GDF owners/operators and to date, have positioned themselves as very concerned regarding the mandatory compliance timeframe. Some have requested in writing that the CARB address this concern by extending the final compliance date another four years.

The major organizations operating on a statewide level are:

- Western States Petroleum Association (WSPA)
- The California Independent Oil Marketing Association
- The California Grocer's Association

In addition, there are a number of smaller groups that operate at the county or regional level.

It is my belief that some of the hesitancy of GDF owners to move forward in a timely manner with application submittal is due to a belief that the request for a delay of the final compliance date will occur.

Identification of remaining permitting agencies associated with EVR installations are addressed by contractor Mel Knight (CARB Contract #07-529).

BARRIERS TO TIMELY IMPLEMENTATION

Through attendance at EVR workshops, meetings with permitting agencies, discussion with industry representatives and review of correspondence, a number of barriers to obtaining timely EVR compliance by all GDF's have been identified.

Barriers Associated with Permitting Agencies

To date, APCD's/AQMD's are not receiving many applications as the GDF industry is slow to respond to the EVR upgrade requirements for a number of reasons:

- Limited CARB certified equipment choices – This was a more significant issue early on. Now there are currently three certified equipment types available. However, some GDF operators appear to be holding off in anticipation of the promise from manufacturers that more certifications will result in the market being driven down by competition. In some cases, GDF owners are being told by manufacturers of currently uncertified technologies, to hold off as their equipment will be approved in the near future, and will be available at less cost with reduced maintenance requirements. In reality, at this point there are no guarantees that this will be the case.

- Procrastination on the part of GDF owners – The Phase I EVR experience tends to support this. Some of them will hold out until they are forced to become compliant.

- Limited knowledge on the part of some GDF owners concerning the EVR upgrade requirements and the complexity of permitting agencies that must be satisfied during the evaluation and permitting process. Some of the industry are under the mistaken impression that once they secure only the air district permit, they are "good to go" on the project.

- Some of the larger oil companies are divesting their ownership of the GDFs to individual small business owners. In some instances, this is occurring without the new owner having knowledge of the new EVR Phase II requirements. The result of this is new owners who don't know about, let alone understand the EVR requirements, and some of these folks do not have the financing.

- Some GDF owners are hopeful that the industry association's request for delay in the deadline for final compliance will be granted by CARB.

Barriers Associated with Industry

In addition, the following barriers have been identified which exist within the industry. In many cases, this has resulted in confusion, wasted time and additional expense in attempts to secure necessary permits.

- Some agencies, such as planning and fire, are not knowledgeable of what EVR equipment is, or what the installation of the equipment accomplishes. In many cases, agencies do not possess the necessary information required for processing the application.

- Resource limitations of some agencies prohibit a timely processing of the applications.

- Some agencies are not aware of the April 2009 deadline.

- Some agencies interpret the EVR upgrade requirements to trigger other non-related requirements, such as Americans with Disabilities Act (ADA) upgrades, that increase the overall cost to GDF owners.

- Different requirements exist in various jurisdictions. This results in confusion to the industry as to which agencies require review or permit.

- In some jurisdictions, the permit process becomes more complex as different local agencies have established themselves as the "final step" agency, and refuse to issue their permit until all other agencies have granted approval.

- Some agencies stipulate that engineering drawings are required, while others do not. There is a lack of knowledge as to what is required by each agency. Application submittals sometimes result in "surprises" to the applicant.

- Some GDF owners are hesitant to begin the permitting process due to a lack of available financing

- In some cases, there is a significant time delay between permit issuance and final installation. This delay seems to be caused by either problems with the existing installation being different than what was on paper, or parts just don't fit together, or do not operate as planned. Often manufacturing support to the field is lacking or non-existent.

- Some concern is expressed that as we move closer to the final compliance date, the "surge" of business will result in contractors and installers migrating to the urban areas with a higher inventory of GDFs. This results in difficulty in securing a certified contractor to work in the rural areas of the state.

CATEGORIZING THE BARRIERS

In analyzing the nature of identified barriers, it is evident that many of them can be addressed by increased and improved education and communication, focused on a number of various fronts. For purposes of this report, the following areas of concern have been identified.

- ***Getting the GDF industry to act now, rather than later.***
- ***Improving communication between agencies, the industry, GDF owners and contractors/installers.***
- ***Improving communication agency-to-agency.***
- ***Resource problems -- manpower and financial.***
- ***Making allies of the GDF trade associations.***

THE PLAN AND RECOMMENDATIONS

The major emphasis of the plan is a focus upon the delivery of current information on a continuous basis and providing education regarding the need for the EVR program, it's purpose, how it operates, the availability of equipment, the timeframes, and how to be compliant.

Some plan strategies will build upon what CARB has already begun. Other strategies will recommend new or additional effort.

The plan with recommendations follows, and addresses the previously identified groupings.

1. Getting the GDF industry to act now rather than later:

A. It is recommended that CARB and the local air districts take a strong stand with a firm and unified message to the GDF industry, emphasizing that the EVR program is a critical piece of the state's Clean Air Plan. The technology is in place with sufficient supply and installation is available in a timely manner. CARB and the local districts must remain united in notifying all parties that the final compliance date **WILL NOT** be extended.

B. CARB should build this message into their website and encourage all local districts to send a similar message utilizing websites and compliance alerts to GDF permit holders. The message should be repeated on a continual basis throughout the next 15 months. These messages should also include warnings to avoid waiting to ensure compliance ahead of the deadline, thus avoiding costly penalties. GDF owners need to know there is no valid reason for delay of the program.

C. Some local districts have provided incentives such as a waiver or a reduction of fees for permits. These temporary waivers expire prior to the final compliance date and serve as an incentive to act now rather than later. Other districts have established application deadlines which are date specific to encourage early action. CARB should establish a process wherein "best practices" in place at local districts can be shared with others statewide to improve the overall process.

D. Some districts offer a "fast-track" streamlined permit process if specific requirements are met. If this is proving effective, CARB should encourage a similar process be employed by other agencies.

E. CARB and local district messages need to talk about the fact that the process for approving EVR technology is very lengthy and there is no guarantee that any "silver bullet" technology will be approved within the timeframe leading to final compliance.

2. Improving communication between GDF agencies, the industry, GDF owners, contractors and installers:

A. It is recommended that CARB together with the air districts get complete updated information out to the GDF industry, contractors and installers continuously. Such information should address their own permit requirements and enlighten them as to the fact that reviews and/or permits will be required by the defined agencies within their county or region. To the extent possible, the industry needs to know the requirements they will face up front. This can be accomplished by providing an information sheet at the beginning of the process indicating all of the necessary information, thus minimizing any surprises. In addition, this information should remind the contractor/installer to procure a business license for the jurisdiction in which they propose to provide the service.

B. CARB and the air districts need to communicate EVR information to other involved agencies so that they understand what EVR is and they can prepare to deal with the application flow.

C. CARB needs to expand its current EVR website by adding links to fire, planning and building agencies. Remove the word "processor" from all description section language. In addition, CARB needs to provide a web-based blog for contractors and installers to share and discuss issues.

D. CARB should endeavor to build the website as complete as possible and update as necessary. They should also advertise the availability of the website to all interested parties, especially the agency links provided as an attachment to this report. Information regarding best practices in use should be included, as this is beneficial to others.

E. CARB should establish a "hot-line" telephone number to provide rapid response to inquiries by industry and agencies.

F. CARB should consider a mass mailing to all involved agencies which includes a cover letter and a copy of the latest updated version of the EVR brochure.

G. CARB and the local districts need to continue to plan and implement the informational workshops throughout the state and develop outreach information that will serve to increase attendance by more agencies/industry representatives.

H. CARB should continue to pursue involvement as speakers and/or providing information booths at trade shows, seminars, and conferences of related agencies and industry to enhance greater understanding of the EVR program.

3. Improving communication agency to agency:

A. CARB should encourage local districts to develop a good communication link with the other involved local agencies ensuring that they know whom to contact at the local district regarding EVR requirements.

B. CARB should determine which local districts are not promoting the EVR program and offer needed assistance for outreach as necessary.

A feedback loop from the local districts to CARB indicating progress by the district is critical. The districts currently provide permitting information to CARB. However, information specific to progress of the EVR programs must be obtained by CARB to monitor progress statewide. Permit engineers at the local districts should be consulted to establish this necessary process.

4. Resource problems – manpower and financial:

A. Some agencies are experiencing manpower shortages due to reduced land use planning and building activity. In such cases, a good understanding of the EVR program is critical. CARB should suggest the adoption and use of shortcut, fast track information sheets such as that adopted by the City of Riverside Planning Department. Additional best practices should be communicated to these other agencies as CARB learns of them.

B. In the case of air districts experiencing manpower problems, if possible, CARB should consider the feasibility of temporary placement of permitting staff assistance to "fill the gap". A resurgence of the "circuit rider" concept, if you will.

C. CARB should encourage the local air districts as soon as possible to make an extra effort to notify all public agencies including special districts with fleet fueling operations of the pending EVR deadlines. These agencies are currently preparing FY 08-09 budgets and will need to include the costs of EVR system upgrades in their upcoming budgets. Historically, these types of agencies experience difficulty with compliance deadlines due to a lack of funding.

D. CARB should consider conducting a research survey of funding institutions, both public and private, to determine which (if any) will provide funding in the form of grants or loans for this type of pollution control equipment. This information should then be provided to local districts and the industry.

E. CARB must pursue the manufacturers to provide prompt field support to contractors and installers. If possible, to the point of threatening decertification if equipment cannot be properly installed.

F. CARB should utilize information received by the districts to notify contractors and installers when and where potential customers are still in need of EVR installation. This may help ensure contractor assistance in rural and suburban areas of the state.

5. Making allies with the GDF trade associations:

A. CARB, perhaps with the involvement of CAPCOA, should encourage the trade associations such as CIOMA, WSPA, and the California Grocers Association, to promote early action in the EVR program to their respective members. These groups should be providing assistance to their members to aid them in compliance by the deadline. These associations can be very beneficial in getting information to their members and encouraging them to come into compliance in a timely manner. Such an effort would be beneficial to CARB. It would not bode well with the Legislature and/or the CARB Board of Directors if the associations continue to push for further delay when they have refused to participate in an effort to help bring about compliance.

NEXT STEPS – IMPLEMENTATION SUGGESTIONS

It is suggested that CARB enter into short-term contracts to accomplish the following tasks:

- Work with contractors to categorize short-term measures for quick implementation vs. longer-term measures.

- Direct contractors to develop language for the various letters and other mail-outs to agencies and associations.

- Direct contractors to meet with trade association representatives to solicit their support and assistance for the EVR program.

- Direct contractors to assist CARB with "trouble-shooting" issues that arise related to permitting EVR installations.

- Direct contractors to assist CARB in a survey of financial institutions to determine the availability of funding assistance for GDF owners.

ACCESS LISTING OF AGENCY CONTACTS

California Professional Firefighters Association:
http://www.cpf.org/default/fire department directory/index.cfm

Local Air Districts (on the CARB website):
http://www.arb.ca.gov/capcoa/roster.htm

County Planning Directors (Governor's Office of Planning & Research):
http://www/calpin.ca.gov/directory/county.asp

City Planning Directors (Governor's Office of Planning & Research):
http://www.calpin.ca.gov/directory/city.asp

APPENDIX 9

CONTRACT NO. 07-529: FINAL REPORT FROM MEL KNIGHT

Final Report

Outreach Plan for Local Environmental Health and Certified Unified Program Agencies to Ensure Coordinated Permitting and Compliance with Phase 2 of the California State Evaporative Vapor Recovery Requirements

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This report is prepared in fulfillment of CARB contract 07-529.

Background

The Enhanced Vapor Recovery (EVR) program will require significant equipment upgrades to over 13,000 gasoline dispensing facilities (GDFs) in California by April 2009. The relatively few station that have already performed these upgrades have discovered the EVR upgrades may require permits from several local permit agencies, such as city and county planning and building departments, local fire officials and local environmental health agencies. Many of these agencies are not familiar with vapor recovery requirements, which can lead to additional cost and significant delays (over six months) for station owners. Air Resources Board (ARB) staff has initiated contracts with local government experts to work with these permitting agencies in order to ensure that the April 2009 deadline is met.

Identification of Local Permitting Agencies

The primary or lead local agencies for EVR permitting are the local Air Districts. The outreach plan for local Air Districts is being prepared under a separate, coordinated contract (CARB contract 07-528).

Other local agencies with permitting or other regulatory interests that may be associated with EVR projects include Certified Unified Program Agencies (CUPAs), environmental health agencies, planning agencies, building officials, fire marshals, and sealers of weights and measures.

Consistent with contract requirements, this outreach plan focuses on CUPAs and environmental health agencies, with reference to coordinated actions with other interested agencies.

Certified Unified Program Agencies (CUPAs)

California State law requires that local agency responsibility for implementing hazardous materials permitting and regulation must be carried out by a Certified Unified Program Agency. Permitting of hazardous materials storage including above ground and underground storage tanks (USTs) including associated piping and dispensing systems is one of the program responsibilities of CUPAs or their agents. CUPAs have direct concerns as EVR modifications have the potential to impact multiple areas of the UST system, and will potentially trigger additional inspections, testing and coordinated agency activity. EVR upgrades also may to trigger deferred upgrades that are peripherally related to specific EVR requirements.

There are currently approximately 100 CUPAs recognized by CalEPA, and nearly half are located within environmental health agencies. The remaining agencies are typically administered by fire agencies, with a small number residing in other agency configurations. A current listing of CUPAs, including contact information, can be obtained at the following website: www.calcupa.net.

Environmental Health Agencies

California State law requires that local environmental public health responsibilities are performed under the authority of a Local Health Officer and Director of Environmental Health.

Major areas of environmental health (EH) agency interest in gasoline dispensing facilities are related to retail food, potable water, cross-connection and/or on-site sewage disposal. EH agencies have few direct concerns related to the EVR program, unless EVR upgrades have the potential to interfere with other EH permitted activities, or the potential to trigger deferred upgrades unrelated to EVR.
There are currently local health agencies designated for all 58 counties and additional local health agencies in four cities (Berkeley, Long Beach, Pasadena and Vernon). A current roster of local environmental health agencies, including contact information, can be obtained at the following website: www.ccdeh.com.

Building Officials
Counties and incorporated cities in California have a designated Building Official with primary responsibility for the issuance of building permits and compliance with both uniform and local building codes. Local building officials are responsible for permitting of new and renovation construction consistent with locally adopted versions of the California Building Codes (e.g. Uniform Building Code, Uniform Plumbing Code, Uniform Electrical Code and any additional specialty construction requirements.) Building official concerns for EVR upgrades would include compliance with plumbing and electrical construction codes as well as the potential to trigger unrelated deferred building requirements; e.g. ADA accessibility requirements.
Regional or geographic Building Officials Chapter Liaisons can by located on the California Association of Local Building Officials website: www.calbo.org.

Local Fire Officials
City, County and Special District Fire Departments are responsible for fire prevention related to the permitting of structures and activities that contain flammable materials, including fuels. Fire Marshal concerns related to EVR primarily relate to fuel system integrity related to flammable fuels and vapors. Permitting and inspection by Fire Marshals will be consistent with locally adopted Uniform Fire Code and any local variations. Contact information for California Fire agencies can be found at the following link: http://www.cpf.org/default/fire_department_directory/index.cfm

Sealers of Weights and Measures/Agricultural Commissioners
Sealers of Weights and Measures are responsible for the quantitative integrity of dispensing devices, including gasoline dispensers. Local sealers are responsible for accuracy of dispensing systems and would have concern for any potential to interfere with volume measurement systems at gasoline dispensing facilities.
This function is generally carried out in California Counties as a function of the County Agricultural Commissioner. A current roster of County Sealers of Weights and Measures, including contact information, can be obtained at the following website: www.dca.ca.gov/publications/guide/weights

Planning Departments
City and County Planning departments are responsible for approval and permitting of local land use conditions including zoning, CEQA, and aesthetic community standards. Planning Department interests in EVR projects are generally related to visual impact of

EVR system components, including sight barriers. The following is a link to California Planning Departments, including contact information: www.calpin.ca.gov/directory

Prioritizing Barriers

Compliance with EVR upgrade requirements with the myriad of agencies and required permits can pose significant barriers to the gasoline dispensing facilities. These barriers can include:

Required permits directly related to EVR system.
In addition to permits from the local Air Districts, GDFs will typically need to obtain permits from building officials and fire agencies that directly relate to the installation and operation of the EVR system and its components. Examples of these permits would include the building permits associated with the installation of plumbing and electrical systems, Fire Marshal review for compliance with fire codes, as well as land use permits associated with fencing or landscape plans to enhance aesthetics of the project structures or site.

Permits or reviews peripherally related or even unrelated to EVR system.
A number of regulatory agencies may require review, approval and/or permits related to concerns for secondary impacts associated with the EVR upgrade projects. Examples of these reviews or permits include CUPA review for disruption of tank monitoring systems and potentially Weights and Measures review for impact on dispensing volume measurement. At least one local building official has indicated that EVR upgrade projects will trigger a review of the existing facility for all requirements associated with the Americans with Disabilities Act (ADA) and subsequent requirement for the GDF to make necessary renovations.

Concurrent time requirements for each permitted activity.
Many of the local regulatory agencies issue permits that have a limited effective date (e.g. "*This permit is valid for no more than 90 days*") and frequently these date limits or deadlines do not recognize the need for extended timelines that may be associated with the serial nature of obtaining multiple agency reviews and approvals. While governmental agencies have a legitimate concern for issuing 'open ended' permits, uncoordinated and inconsistent deadlines can pose a significant hardship for GDF compliance.

Permit Fees and inspection cost recovery costs associated with each agency.
Following the passage of the tax limitation Proposition 13, local governmental agencies have sought to recover most, if not all regulatory agency costs via permit fees or fees for service. This has resulted in multiple agencies collecting fees that can cumulatively amount to many thousands of dollars in costs to the GDF.

Fines and penalties for non-compliance with requirements and/or deadlines.

Local regulatory agencies can utilize fines or penalties as sanctions for noncompliance or failure to comply by required deadlines. While penalties are intended to be incentives to ensure compliance, GDFs may perceive some non-compliance as unavoidable due to the multiple layers of regulation, and the fines or penalties could be perceived as posing an additional and burdensome cost that may contribute to making the cumulative costs beyond available resources.

Cumulative EVR upgrade costs
Typical EVR upgrade costs for a single GDF are expected to be in the range of $85,000 to $100,000, with additional ongoing operating and maintenance costs. This expenditure may pose a financial hardship for a number of small, independent or marginal operations.

Identification of Critical Paths to Permit Issuance

The following is the typical process and sequence for local agency permit issuance and subsequent confirmation of compliance:

Applicant submittal of completed application(s) with associated fee payment.
GDFs or their authorized agents are required to submit appropriate applications to all local agencies that have pertinent requirements. Applications require project descriptions, site information and technical data that may require sign-off from a professional engineer and/or architect. Applicants will generally be required to make full or partial payment for all anticipated agency costs or fees at the time of application.

Agency review for completeness and adequacy.
Local agencies will perform plan checks to ensure that all applicable information has been provided. If an agency determines that the application is incomplete or does not meet all requirements, applicant will be required to resubmit application with amended information, possibly incurring an additional review fee.

Approval/permit issuance to allow initiation of permitted activity.
Following determination of completeness and adequacy, agencies will issue a permit that relates to the specific agency scope of regulation. In some instances, the permit will be conditioned to also require appropriate sign-off or permit issuance by other interested agencies.

On-site inspection(s) at initiation, during and/or post permitted activity.
Subsequent to permit issuance and agency approval, applicants will be allowed to initiate EVR upgrades, with some agencies requiring an inspector presence on one or more instances that may include the beginning, middle or end of permitted activity. Some agencies may charge a separate inspection fee, and any deficiencies identified during inspection may result in correction, re-inspection and additional fees or penalties.

Subsequent periodic inspections or compliance audits to ensure continued compliance with operational and/or maintenance requirements.
While some local agencies oversight may end with the completion of the permitted and approved upgrade, other agencies will have a continuing program of inspection and

reporting that ensures compliance related to operation and maintenance beyond initial installation. In most instances, building officials, planning agencies and CUPAs will require project permitting and approval for EVR upgrade projects, and they will not typically have an ongoing compliance activity. Air Districts and Fire Marshals will generally have a requirement for ongoing compliance audits or inspections, and these will usually have an annual fee or other cost recovery mechanism.

Recommendations

Recommended Strategies for Streamlined Permit Issuance

The following are recommendations to CARB, local Air Districts and/or other interested agencies or parties have a role in ensuring an enhanced level of timely and effective compliance with pending EVR upgrade requirements:

Document "best practices" in use at successful jurisdictions.
A number of lessons have already been learned by both agencies and GDFs in the EVR upgrades that have been completed to date. Documenting and communicating the experience and procedures that have been associated with successful completed upgrades can be shared and hopefully replicated by other agencies seeking efficient and effective model policies and procedures.

Identify business assistance programs and resources.
In addition to the small business assistance associated with the federal Clean Air Act, many cities and counties have initiated business assistance resources to provide assistance in a wide range of compliance areas. The Sacramento County Business Environmental Resource Center (BERC) is an example of an industry assistance resource that provides multi-agency compliance support at no additional cost to project applicants.

Encourage coordinated permitting and inspections.
A number of cities and counties have established permit application policies and procedures that are intended to ensure that multiple agencies share information and notifications, encouraging coordinated actions that promote timely and efficient review and approval.

Encourage consolidated permitting and inspections.
Several local jurisdictions have initiated 'one stop' permit centers or joint permit counters that have been successful in saving time and costs to both applicants and agencies.

Suggest use of 'lead' agency designation.
In order to ensure timely compliance, a number of local agencies have determined that it is in their interest to assume an active or 'lead' role in the contact and coordination of communication with other agencies. This is frequently utilized where there is multiple agency involvement in toxic site remediation, and a similar model should provide benefit for the multi-agency interests in EVR upgrade projects.

Encourage and promote access to subsidies and alternative funding.
A number of local Air Districts are planning to offer reduced fees for early EVR upgrades. The State Water Resources Control Board may have UST funds available to assist with EVR upgrade costs. CARB and local Air Districts should publicize and assist in publicizing and facilitating access to these monetary assists.

Anticipate need for 'surge' permitting and inspection resources as deadline nears.
Past experience has proven that agency and industry resources can be overwhelmed by a surge of 'last minute' activity as a regulatory deadline nears. This has been the historical case with a number of underground storage tank (UST) and dispensing system upgrades that have exhausted the available engineering, consultant, contractor and regulatory staff resources available to respond to the atypical high volume of upgrade projects that occur as deadlines near. Anticipating this 'surge' of activity may allow planning for temporary help, overtime, redeployment of staff and other actions that will minimize the overwhelming of available resources.

Provision of assistance from CARB and other State and regional entities that may have experience and expertise in subject area.
Cities and counties may be able to receive technical assistance or 'mutual aid' from State agencies or neighboring peer jurisdictions. Local Air Districts, CUPAs, environmental health agencies, fire agencies, and building officials have regional information sharing mechanisms, and these may include agreements to provide mutual aid or assistance. CARB or other CalEPA BDOs may be in a position to provide specific engineering or other technical assistance to local agencies lacking resources or experience with EVR projects.

State or regionally based 'Red Team'(s) might be established to be a 'circuit riding' permit assistance unit.
CARB should encourage or seek to initiate a specialty team or contract resources with the capacity to provide timely regional resource augmentation for local agencies. The State has provided a similar resource in the area of bioterrorism laboratory capacity, and CalEPA and the Attorney General have provided attorney resources to assist with local environmental crimes prosecution.

Recommended Outreach Plan for Permitting Agencies:

Promote early awareness by all involved agencies.
In addition to the existing communication channels with local Air Districts, CARB should initiate continuing and sustained contact with other local agencies to ensure awareness of pending EVR requirements and deadlines.

Develop and distribute written pamphlets and brochures for agencies and applicants.
CARB and local Air Districts should develop and distribute informational materials targeting all GDFs and interested permitting agencies. These materials should be

available in multiple languages in both print and electronic formats, with website links utilized to facilitate multi-agency coordination and collaboration.

Meetings with key leadership of all associations and agencies.
Nearly all industry and governmental agencies have organized networks or associations that have an interest in serving as informational conduits for their membership. Following awareness and 'buy-in' by key association staff and leadership, these existing networks may be utilized in the dissemination and feed back on EVR upgrade information.

Participation in existing agency workshops and conferences.
Regulatory professionals and GDF industry groups sponsor statewide and regional meetings, workshops and conferences that can be utilized as efficient forums to share EVR upgrade information. CARB and local Air Districts can participate in these meetings as a presenter, exhibitor and/or sponsor.

Form private sector alliances with associations, permit assistors and contractors.
There is an existing cadre of private permit assistance contractors and other private sector trade associations with an interest in facilitating efficient and timely EVR upgrade compliance. CARB and local air districts should initiate partnership and collaboration with these private sector resources in the mutual interest of GDF awareness and compliance actions.

Develop and publicize early implementation incentives, as well as disincentives or penalties for late or non-compliance.
Specific local Air Districts have established discounts or subsidies as an incentive for early EVR upgrade compliance, while a number of local regulatory agencies will be assessing fines and penalties for missing compliance deadlines. Increasing the awareness of these enforcement 'carrots and sticks' should assist in encouraging early upgrade implementation.

Develop specific outreach for public agencies that have historically had difficulty in timely upgrades or contracting.
Independently owned as well as government operated GDFs have documented difficulty in timely compliance with previous UST and EVR upgrade requirements. CARB and local Air Districts should anticipate the need for specific targeted outreach directed to these GDFs.

Examples of Specific Recommended Activities:

Participation at CUPA Annual Conference and CUPA Forum regional meetings.
CARB should establish a continuing presence as an exhibitor, presenter, and participant at the CalCUPA Forum Annual Conference. The 2008 Conference will be held in the South San Francisco area in February. CARB should seek participation in the CUPA Forum Board/Executive Committee meeting in order to promote CUPA leadership awareness of the pending EVR upgrade requirements. Participation in the annul

conference should be utilized to establish ground work for future, continuing participation in State and Regional CUPA Forum activities. The CUPA Forum receives staff support from Justin Malan (Justin@ccdeh.com) and Sheryl Baldwin (Sheryl@ccdeh.com) and they can assist in direction to CUPA activities. More information on the CalCUPA Forum organization and activities can be found on the CalCUPA Forum website www.calcupa.net.

Participation in CCDEH Statewide and Regional meetings.
CARB should initiate a continuing presence and availability to local environmental health officers. The California Conference of Directors of Environmental Health (CCDEH) has and annual meeting each Fall, regularly scheduled meetings of their statewide leadership, and there are also periodic meetings of all Directors in four regional zones. Justin Malan is the Executive Director of CCDEH can facilitate participation in CCDEH meetings, and he can be contacted at Justin@ccdeh.com. More information concerning the CCDEH organization and activities can be found on the CCDEH website www.ccdeh.com.

Participation in California Environmental Health Association (CEHA) conference.
CEHA is a professional association that holds an annual symposium each Spring that attracts a large number of environmental health professionals from environmental health jurisdictions throughout the State. This symposium may provide an opportunity to be an exhibitor and possible program presenter promoting EVR awareness. The 2008 CEHA Annual Educational Symposium (AES) will be held in San Diego in March. Communication or participation in CEHA functions can be initiated via the CEHA website at www.CEHA.org.

Establish a basis for similar information sharing with other interested local agency forums including planners, building officials, Sealers of Weights and Measures and local fire officials.
Nearly all regulatory disciplines have an existing association or networking mechanism similar to CAPCOA, CUPA Forum or CCDEH. CARB should establish communication with staff and leadership in these organizations in order to promote awareness and enhanced capacity to participate in EVR upgrade activities.

(Note: Contractor is aware that CARB has planned or accomplished a number of the recommended activities in the course of this project.)

APPENDIX 10

FEBRUARY 20, 2008, LETTER FROM JAMES GOLDSTENE, ARB EXECUTIVE OFFICER TO ALL LOCAL AIR POLLUTION CONTROL OFFICERS

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

February 20, 2008

Addressees: All Local Air District Air Pollution Control Officers (APCO)

Dear APCO:

I am writing to encourage you to revise your district's vapor recovery rules as outlined by the U.S. Environmental Protection Agency (U.S. EPA) in the attached memoranda (Attachment 1). U.S. EPA is encouraging states to eliminate the requirement for Phase II vapor recovery systems on gasoline refueling dispensers for certain motor vehicle fleets in light of the growing use of Onboard Refueling Vapor Recovery (ORVR) systems in those fleets.

The fleets at issue are new vehicles initially fueled at motor vehicle assembly plants, late model rental cars refueled at rental car facilities, corporate fleets refueled at corporate-owned pumps, and flexible fuel vehicles (FFVs) refueled at E85 fuel dispensers.

Section 202(a)(6) of the federal Clean Air Act (Act) allows U.S. EPA to remove the requirement for vehicle refueling gasoline vapor recovery systems in ozone nonattainment areas after determining that ORVR systems for motor vehicles are in widespread use. For new vehicles initially fueled at motor vehicle assembly plants, late model rental cars refueled at rental car facilities, and corporate fleets refueled at corporate-owned pumps, U.S. EPA has defined widespread use as 95 percent of the vehicles equipped with ORVR. By virtue of being made up of new late-model vehicles, these fleets have met this criterion.

For FFVs, U.S. EPA is recommending that states show that any increase in emissions caused by operating E85 refueling dispensers without vapor recovery systems is so small as not to interfere with ozone attainment. ARB staff has estimated the emissions to be less than 0.10 tons per day of reactive organic gases statewide in 2015 (see Attachment 2) and believes that it is reasonable to conclude that there is no impact on ozone attainment.

The process for revising a district's vapor recovery requirements is the same as for any other district rule State Implementation Plan (SIP) submission: adopt the amended rules at a public hearing and transmit the amended rules to ARB for processing as a SIP revision and submittal to U.S. EPA. ARB staff is available to assist you with rule review

or in doing additional analysis before proceeding, including more specific emissions assessment and attainment impacts, impact on progress toward state standards, and any possible toxic air contaminant issues.

If you have any questions or need further information regarding vapor recovery requirements, please contact Cindy Castronovo of the Monitoring and Laboratory Division at (916) 322-8957. For questions regarding the emissions impact analysis, please contact Dean Simeroth, Chief of the Criteria Pollutants Branch, at (916) 322-6020.

Sincerely,

James N. Goldstene
Executive Officer

Attachments

cc: Dean Simeroth, SSD
Kurt Karperos, PTSD
Cindy Castronovo, MLD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

DEC 12 2006

MEMORANDUM

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

SUBJECT: Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated

FROM: Stephen D. Page, Director
Office of Air Quality Planning and Standards

Margo Tsirigotis Oge, Director
Office of Transportation and Air Quality

TO: Regional Air Division Directors

The purpose of this memorandum is to provide guidance to States concerning the removal of Stage II gasoline vapor recovery systems where States demonstrate to EPA that widespread use of onboard refueling vapor recovery (ORVR) has occurred in specific portions of the motor vehicle fleet. The specific fleets addressed here include:

1. initial fueling of new vehicles at automobile assembly plants
2. refueling of rental cars at rental car facilities
3. refueling of flexible fuel vehicles at E85 dispensing pumps

Background

Stage II vapor recovery systems are required to be used at gasoline dispensing facilities located in serious, severe, and extreme non-attainment areas for ozone under section 182(b)(3) of the Clean Air Act (CAA). States have included these control measures in their federally-approved state implementation plans (SIPs) in the form of generally applicable regulatory requirements governing all gasoline dispensing facilities that exceed the relevant gasoline dispensing throughput criteria. However, section 202(a)(6) of the CAA allows EPA to revise or waive the section 182(b)(3) Stage II requirement for these ozone non-attainment areas after the Agency determines that ORVR is in widespread use throughout the motor vehicle fleet.

CAA section 202(a)(6) does not specify which motor vehicle fleet must be the subject of a widespread use determination before EPA may revise or waive the section 182(b)(3) Stage II requirement. Nor does the CAA identify what level of ORVR use in the motor vehicle fleet must be reached before it is "widespread." EPA expects the possibility of

different rates of the implementation of ORVR across different geographic regions and among different types of motor vehicle fleets within any region. Given this, EPA does not believe that CAA section 202(a)(6) must be read narrowly to allow a widespread use determination and waiver of the Stage II requirement for a given area or area's fleet only if ORVR use has become widespread throughout the entire United States, or only if ORVR use has reached a definite level in each area. Rather, EPA believes that section 202(a)(6) allows the Agency to apply the widespread use criterion to either the entire motor vehicle fleet in a State or non-attainment area, or to special segments of the overall fleet for which ORVR use is shown to be sufficiently high, and to base widespread use determinations on differing levels of ORVR use, as appropriate. Moreover, a single national rulemaking is not needed to grant such a waiver for a specific area. Instead, EPA believes that the Act allows the Agency to use an area-specific rulemaking approving a SIP revision to issue the section 202(a)(6) waiver for a relevant fleet in a non-attainment area, where a State meets the recommended criteria discussed below.

Various metrics have been studied for demonstrating widespread use of ORVR in motor vehicle fleets. One metric focuses on the percentage of vehicles in service that are ORVR-equipped. Based on our preliminary analysis, this metric seems to track fairly closely with the percentage of vehicle miles traveled (VMT) from ORVR-equipped vehicles, and with the percentage of gasoline sold which is dispensed to ORVR-equipped vehicles. In fact, since newer vehicles tend to be driven more miles than older models, VMT traveled by ORVR-equipped vehicles and gasoline dispensed to ORVR-equipped vehicles may exceed 95 percent in a 95 percent ORVR-equipped fleet.

Another metric that EPA considered is when VOC emissions resulting from the application of ORVR controls alone equal the VOC emissions when both Stage II vapor recovery systems and ORVR controls are used, after accounting for incompatibility excess emissions. The incompatibility excess emissions factor relates to losses in control efficiency when certain types of Stage II and ORVR are used together. Studies conducted in three northeastern states indicate that when the percentages of motor vehicles in service with ORVR, vehicle miles traveled by ORVR-equipped vehicles, or gasoline dispensed to ORVR-equipped vehicles are above 95 percent, then the widespread use metric based on comparable VOC emissions will likely have been reached. For this reason, EPA believes that if 95 percent of the vehicles in a fleet have ORVR, then widespread use will likely have been demonstrated.

1. Initial Fueling at Automobile Assembly Plants

Based on our preliminary analysis, EPA expects that if a State's submission of a SIP revision shows that 95 percent of the new vehicles fueled at an automobile assembly plant are equipped with ORVR, and that this level of ORVR use would not decrease, the Agency can determine that widespread use of ORVR has been achieved for the fleet of motor vehicles that are fueled at that facility.

Since model year 2000, all passenger cars have been required to have ORVR. Also since 2006, all light duty trucks, SUVs and medium duty vehicles are required to be equipped

with ORVR. There may be a few situations, such as the chassis for motorized mobile homes, which still do not have ORVR. However, the number of these would be small. It is apparent that at most automobile assembly plants greater than 95 percent of the vehicles manufactured would have ORVR. Many assembly plants manufacture 100 percent ORVR equipped vehicles. Only such new vehicles are expected to be fueled at the automobile assembly plants.

States desiring to remove the Stage II requirement for these facilities would need to submit a SIP revision that EPA would evaluate through notice and comment rulemaking. The SIP would need to demonstrate that the widespread use benchmark has been achieved and provide assurance that any facility wishing to remove Stage II equipment maintains its eligibility for its motor vehicle fleet. Any EPA SIP approval would also be subject to the CAA section 110(l) requirement that the revision not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other requirement of the CAA.

2. Refueling of Rental Cars at Rental Car Facilities

Similarly, EPA expects that if a SIP revision submission demonstrates that 95 percent of the vehicles in an automobile rental fleet refueling at a rental car facility are equipped with ORVR and that this level of ORVR use would not decrease, then widespread use of ORVR could be found for the motor vehicle fleet refueling at that facility. Most large rental car companies rent current model vehicles that would all have ORVR. There may be truck rental companies which have older vehicles which do not have ORVR and that would not be able to demonstrate widespread use of ORVR for their fleets. As discussed above, any SIP revision would be subject to CAA section 110(l) and other applicable requirements, and State and local agencies should consider any potential transportation conformity impacts if Stage II is currently included in a SIP's on-road motor vehicle emissions budget.

3. Refueling Flexible Fuel Vehicles at E85 Dispensing Pumps

E85 is a motor vehicle fuel that is a blend of as little as 15 percent gasoline and up to 85 percent ethanol. (In wintertime applications, the ratio may be 30 percent gasoline and 70 percent ethanol.) Ethanol is ethyl alcohol, a type of alcohol which can be produced from renewable resources such as corn. Based on the agency's survey of existing SIPs, EPA believes that most States have defined "gasoline" (for purposes of controlling emissions of VOC from refueling activities) to include gasoline/alcohol blends that have the same volatility as E85. EPA's guidance for States in developing their Stage II SIPs in the early 1990s suggested that States use the same definition of "gasoline" as the one found in EPA's Standards of Performance for Bulk Gasoline Terminals at 40 C.F.R. 60.501, which includes "any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals (kPa) or greater which is used as a fuel for internal combustion engines." EPA recommended using this definition to most broadly reach situations in which refueling of motor vehicles results in evaporative VOC emissions that contribute to ozone non-attainment concentrations, and to avoid a narrow interpretation of what is "gasoline" that

would allow significant VOC emissions from motor vehicle refueling activities in non-attainment areas to go uncontrolled.

E85 can only be used in specially designed flexible fuel vehicles (FFVs), which have mostly been manufactured since 1998. Since these are newer vehicles, most of them are equipped with ORVR, and every FFV built today has ORVR. Thus, most vehicles refueling at E85 dispensing pumps are already having their evaporative emissions captured, as in the cases of late model rental cars refueling at rental car facilities and newly manufactured cars being fueled for the first time at automobile assembly plants. EPA estimates that 59 percent of FFVs in current use are equipped with ORVR. The percentage of FFVs with ORVR will continue to climb as older vehicles are taken out of service and new models join the fleet. Across different ozone non-attainment areas and between States, these percentages may vary.

EPA believes that encouraging the use of E85 as a motor vehicle fuel reduces emissions of other air pollutants such as CO and benzene, a known human carcinogen, and reduces emissions of greenhouse gases. In addition, based on available information, the Agency is concerned that there is currently a lack of certified Stage II equipment for E85 (which may require different materials of construction than conventional Stage II equipment), and that the timing for when certified E85-compatible equipment will become widely available is uncertain. This may unnecessarily hinder E85 distribution in areas that now require Stage II.

Unlike in the cases of automobile assembly plants and rental car facilities, EPA is not recommending a specific percentage of the FFV fleet that should have ORVR before widespread use could be determined. This is because most E85 compatible vehicles are already equipped with ORVR and this percentage is increasing over time, whereas for automobile assembly plants and car rental facilities very high percentages of ORVR use have in most cases already been reached and are not expected to further increase significantly. The general use of ORVR in FFVs, instead, is expected to significantly increase, as are the miles driven by and amount of fuel dispensed to recent ORVR-equipped FFVs compared to those manufactured before 2000 without ORVR.

Moreover, we believe that in determining whether widespread use of ORVR has been demonstrated, it is reasonable under section 202(a)(6) to consider the VOC emissions impacts of removing Stage II, and that those impacts may inform the percentage of ORVR-equipped vehicles that would need to be achieved for a specific motor vehicle fleet or in a specific non-attainment area. EPA expects that the air quality impact of allowing E85 refueling facilities to operate without Stage II controls would likely be minimal in most non-attainment areas. FFVs currently comprise about 2 percent of the total US fleet. Non-ORVR FFVs are less 1 percent of the total U.S. vehicle fleet. EPA estimates that non-ORVR FFVs participate in only about 0.5 percent of all refueling events. Furthermore, because of the relatively small number of stations that offer E85 (around 1,000 out of 170,000 total refueling stations) EPA believes that very few of these non-ORVR refueling events actually occur at E85 pumps.

Considering the factors discussed above, if an area can demonstrate that any increase in emissions caused by operating E85 fueling facilities without Stage II controls is so small as to clearly not interfere with attainment of the ozone standard or reasonable further progress or any other applicable CAA requirement, then EPA expects it could find that ORVR is in widespread use for FFVs when refueling at E85 facilities in this area. These areas could then allow E85 facilities to operate without Stage II controls, after modifying their SIPs such that E85 is not included within the definition of "gasoline" for purposes of Stage II vapor recovery controls (or after taking other necessary SIP revision action). As discussed above, States would need to submit SIP revisions affecting this change to their current Stage II SIPs, which EPA would evaluate through notice and comment rulemaking, subject to the provisions of CAA section 110(l). In addition, State and local agencies should consider if there are any transportation conformity impacts related to removing Stage II, if emissions reductions from Stage II are included in a SIP's on-road motor vehicle emissions budget. Due to the expected rapid growth of E85 installations, EPA will explore the development of ways to expedite the SIP revision process for States which are dealing with the E85 issue.

General Exclusions from Widespread Use Determinations

States in the ozone transport region (OTR) are still required to apply Stage II, or a comparable measure, in all areas under 184(b)(2) of the CAA. This requirement is not affected by any widespread use determination or waiver of the section 182(b)(3) requirement granted under section 202(a)(6). For the independent section 184(b)(2) "comparable measure" requirement to not prevent an appropriate removal of Stage II controls, OTR States may want to revisit their previously approved comparable measure SIPs to consider substituting available non-Stage II measures for the Stage II controls they currently require.

Also, some States have chosen to add Stage II vapor recovery system requirements in their SIPs for ozone nonattainment areas that are classified in a category lower than "serious." While it is not necessary for States to demonstrate ORVR is in widespread use in moderate or cleaner ozone non-attainment areas, a revision of previously adopted SIP requirements to specifically waive Stage II requirements in such areas would need to comply with the provisions of CAA section 110(l) and, as described above, consider any transportation conformity impacts as applicable.

This guidance for widespread use determinations for special sectors would not necessarily apply to widespread use determinations for the general motor vehicle fleet. Within the overall motor vehicle fleet, the rate of penetration of ORVR-equipped vehicles has not advanced at the same rapid rates as for the fleets discussed in this memorandum. EPA is still considering the possible criteria for determining widespread use for the general fleet.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

NOV 28 2007

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Removal of Stage II Vapor Recovery from Refueling of Corporate Fleets

FROM: Stephen D. Page, Director
Office of Air Quality Planning and Standards

Margo Tsirigotis Oge, Director
Office of Transportation and Air Quality

TO: Regional Air Division Directors

The purpose of this memorandum is to provide guidance to States concerning the removal of Stage II gasoline vapor recovery systems at gasoline refueling facilities exclusively dedicated to refueling "corporate" or "commercial" fleets, where States demonstrate to the Environmental Protection Agency (EPA) that widespread use of onboard refueling vapor recovery (ORVR) has occurred in such fleets. Corporate or commercial fleets include vehicles owned by corporations, governments, universities or other organizations which use the vehicles for business purposes and typically fuel the vehicles at fueling pumps owned and operated by the fleet owner and exclusively dedicated to fueling the fleet.

On December 12, 2006, EPA issued a memorandum, "Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated," (attached) which discussed how States may explore amendments to their State Implementation Plans (SIPs) to allow Stage II gasoline vapor recovery to be removed from specific fleet situations, namely:

1. initial fueling of new vehicles at automobile assembly plants;
2. refueling of rental cars at rental car facilities; and
3. refueling of flexible fuel vehicles at E85 dispensing pumps.

The December 12, 2006, memo states that widespread use of ORVR will likely have been demonstrated if 95 percent of the vehicles in a fleet have ORVR. In today's memorandum, EPA is indicating that it believes that if a State demonstrates that 95 percent of the vehicles in a corporate or commercial vehicle fleet are equipped with ORVR and that

this level of ORVR use would not decrease, then widespread use of ORVR could be found for the corporate or commercial motor vehicle fleet, such that Stage II controls could be considered for removal from a refueling facility that is exclusively dedicated to refueling that fleet.

States desiring to remove the Stage II requirement for these facilities would need to submit a SIP revision that EPA would evaluate through notice and comment rulemaking. The SIP would need to demonstrate that the widespread use benchmark has been achieved and provide assurance that any facility wishing to remove Stage II equipment maintains its eligibility for its motor vehicle fleet. Any EPA SIP approval would also be subject to the Clean Air Act (CAA) section 110(l) requirement that the revision not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other requirement of the CAA. In addition, State and local agencies should consider if there are any transportation conformity impacts related to removing Stage II, if emissions reductions from Stage II are included in a SIP's on-road motor vehicle emissions budget(s).

As mentioned in the December 12, 2006 memorandum, this guidance for widespread use determinations for corporate fleets would not necessarily apply to widespread use determinations for the general motor vehicle fleet. Within the overall motor vehicle fleet, the rate of penetration of ORVR-equipped vehicles has not advanced at the same rapid rates as in some corporate and rental fleets. EPA is still considering the possible criteria for determining widespread use for the general fleet.

In addition, the December 12, 2006, memorandum explained that widespread use determinations would not affect separate requirements applicable to States in the ozone transport region. This exclusion would also apply in the case of corporate or commercial fleets with widespread use of ORVR.

If you have questions about this recommendation, you may contact William L. Johnson in EPA's Office of Air Quality Planning and Standards by telephone at (919) 541-5245 or by e-mail at johnson.williamL@epa.gov.

Attachment

Attachment 2

Estimated ROG Emission Increases
From Removal of Stage 2 Vapor Recovery from E85 Fuel Dispensers

Year	Non-ORVR flex fuel vehicle population[1] (1,000's)	Annual VMT per vehicle[2], (1,000's)	% VMT fueled with E85[3]	E85 fuel economy[4] (miles per gallon)	Annual E85 used per vehicle[5], (gallons)	Total E85 used daily[6], 1,000's (gallons)	ROG emissions[7], statewide (tons per day)
2005	110	13.5	0	14.8	0	0	0
2010	95	11.4	5	14.8	38.5	10.0	0.035
2015	67	10.3	15	14.8	104	19.1	0.073
2020	34	9.3	25	14.8	157	14.6	0.055

Notes:

1. Based on data provided to ARB by automobile manufacturers of flex fuel vehicles (FFVs) sold in California 1997 – 2005, for which nearly all FFVs were light-duty trucks. Annual number of FFVs is estimated using survival fraction of vehicles as a function of vehicle age. Assumes all FFV light-duty trucks equipped with onboard refueling vapor recovery (ORVR) starting with MY2003. Average age of vehicles in 2005 non-ORVR FFV fleet is 4 years.

2. Annual vehicle miles traveled (VMT) data for light-duty trucks based on EMFAC2007.

3. Assumes increase in E85 refueling over time as number of E85 pumps increase and motorists become aware that E85 costs less than reformulated gasoline. The assumed percentages in each of the three years are estimates based on these factors.

4. Assumes:

   - Fuel economy of FFVs operating on E85 based on U.S. EPA Fuel Economy Guides;
   - Fuel economy does not decline with vehicle age for newer model year vehicles equipped with advanced on-board diagnostics.

5. Calculated: annual VMT X % fueled with E85 / fuel economy in miles per gallon.

6. Calculated: vehicle population X annual gallons E85 / 365 days per year.

7. Calculated: daily gallons of fuel used X evaporative emissions in pounds TOG per gallon of fuel throughput X 0.92 (ratio of ROG/TOG).

Assumes:

- E85 evaporative emissions factor same as emissions factor for reformulated gasoline. (Source: Full Fuel Cycle Assessment Well to Tank Energy Inputs, Emissions, and Water Impacts, CEC-600-2007-002-D, February 2007, pp. 5-30 to 5-35);

- Reformulated gasoline evaporative emissions factor 7.6 pounds TOG per 1,000 gallons of fuel throughput (Source: "Uncontrolled Vapor Emission Factor at Gasoline Dispensing Stations," January 5, 2000.)